

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3332 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

D D THUMAR

Versus

MAMLATDAR

Appearance:

MR AN PATEL for Petitioner
MR DESAI, AGP for Respondent No. 1
MR JR NANAVATI for Respondent No. 4

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 07/07/2000

ORAL JUDGEMENT

This petition under Articles 226 & 227 of the Constitution of India is filed by the petitioner with a prayer to issue a writ, order or direction quashing and setting aside the Order passed by the Gujarat Revenue Tribunal (hereinafter referred to as the "GRT" for short)

in Revision Application No. TEN.B.R.28/89 dated 15.3.1991 (Annex.D hereto).

Patel Vashram Punabhai Dobariya, R/o village Virpur, Ta: Jetpur of District : Rajkot, was the applicant before the GRT who is respondent no.4 in this petition. He had prayed before GRT that the order of Mamltadar & ALT, Jetpur in Ceiling Case No. 105/76-77 dated 28.2.1986 be quashed and set aside whereby the Mamlatdar & ALT, Jetpur had held that the total holding of the applicant i.e. respondent no.4 herein, was 45 Acres & 33 Gunthas out of which the applicant was entitled to hold one unit equal to 45 Acres, as a result 33 Gunthas of land was excess holding of the land with the applicant. Said decision of the Mamlatdar was taken into revision suo motu by the Deputy Collector and the authority directed the Mamlatdar & ALT that whenever excess land is found to be a fragment, the Mamlatdar & ALT should hold that the whole survey number is an excess land. As a result he was pleased to declare 2 Acres of lands of survey no.639 as excess land. Respondent No.4, therefore, had approached GRT and got both the orders set aside. Against this decision of GRT the petitioner has filed present petition.

While issuing Rule, this Court ordered to maintain status quo qua the lands admeasuring 2 Acres of survey no.639 situated in the sim of village Virpur, Ta: Jetpur. Learned Senior Counsel Mr. J.R. Nanavati appearing for respondent no.4, (the applicant before the GRT) who is original holder of the land, submitted that Respondent No.4 is still holding and cultivating the said land which was declared as excess and the petitioner has no locus standi because he is claiming a right for these lands through the respondent State. The petitioner has submitted that had these lands been declared as excess lands and vested in the State Government, he could have been allotted the same.

I have considered the various contentions raised by the petitioner in para-6 of the petition. I have also considered affidavit-in-reply filed by respondent no.4 and the decision of the GRT at Annex.D hereto, assailed by the petitioner in this petition. Plain reading of the impugned order gives an impression that the findings of the GRT are just, legal and proper and in accordance with the set of facts available on record. In my view, the decision rendered by the GRT is on proper appreciation of material on record and in consonance with the provisions of sec.6(3 B) and sec.18(1)(a) of the Gujarat Agricultural Lands Ceiling Act, 1960. From the affidavit-in-reply filed by respondent no.4 as well as from the impugned order, it is amply established that the

respondent no.4 is in actual physical possession of the lands in question and is also cultivating the same till this date. Possession thereof has always remained with respondent no.4. There is no counter to these averments. In view of this, I do not see any need to refer to any of the decisions wherein relevant legal position is discussed. However, it is sufficient to hold that even as per the decision of the Mamlatdar & ALT, the alleged excess land was not exceeding 33 Gunthas. Decision of the Deputy Collector had created a situation whereby respondent no.4 was directed to continue with the land which is less than permissible holding i.e. 45 Acres. GRT has taken care of all the relevant aspects namely the right to hold units as per sec. 6(3 B) and correct interpretation of sec.18(1)(a) of the Act.

The petitioner has averred that he was put to possession by Revenue Authorities and a Rojkam (Panchanama), Annex.B, was drawn in presence of panchas as the land in question was allotted to him. But other document Annex.E Page 22 gives an impression that possession of the petitioner was a paper possession.

It is pertinent to note that though the petitioner has averred that this petition is under Articles 226 & 227 of the Constitution, but in reality, the petition is under Article 227 of the Constitution of India looking to the nature of points agitated by the petitioner. When, petition is under Article 227 of the Constitution and if the decision challenged is found to be just, proper and in accordance with law, this Court should not interfere with the same. Substantive justice is done by the GRT. So, I am not inclined to interfere with the finding of the GRT. Hence, no reliefs, as prayed for by the petitioner in this petition, can be granted.

In the result, petition fails and is hereby dismissed. Rule discharged. Interim relief, if any, stands vacated. This Court could have awarded costs to the respondents, but looking to the socio-economical background of the petitioner, no costs is awarded.

7.7.2000 [C.K. BUCH, J]

*rawal